

ASSEMBLY BILL NO. 100—ASSEMBLYWOMAN SWANK

PREFILED FEBRUARY 3, 2017

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing contractors.
(BDR 28-194)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to contractors; revising the requirement that certain types of provisions are void and unenforceable in certain agreements with contractors; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law prohibits a provision in a contract for a public work, other than a
2 contract entered into by the Nevada Department of Transportation, that requires a
3 contractor to waive a right to damages or an extension of time acquired as a result
4 of a delay caused by certain actions by the public body. (NRS 338.480, 338.485)
5 Existing law also prohibits a provision in an agreement, except contracts for public
6 works and certain other agreements, that requires a prime contractor to waive,
7 release, or extinguish a claim or right for damages or an extension of time that the
8 prime contractor may otherwise possess or acquire as a result of delay, acceleration,
9 disruption or an impact event that is unreasonable under the circumstances, that was
10 not within the contemplation of the parties at the time the agreement was entered
11 into, or for which the prime contractor is not responsible. (NRS 624.622) This bill
12 adds those prohibited provisions to the list of provisions that are prohibited in
13 existing law in contracts for public works other than contracts for public works
14 entered into by the Nevada Department of Transportation.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** NRS 338.485 is hereby amended to read as follows:

3 338.485 1. A person may not waive or modify a right,
4 obligation or liability set forth in the provisions of NRS 338.400 to
5 338.645, inclusive.



* A B 1 0 0 R 1 *

1 2. A condition, stipulation or provision in a contract or other
2 agreement that:

3 (a) Requires a person to waive a right set forth in the provisions
4 of NRS 338.400 to 338.645, inclusive;

5 (b) Relieves a person of an obligation or liability imposed by the
6 provisions of NRS 338.400 to 338.645, inclusive;

7 (c) Requires a contractor *or subcontractor* to waive, release or
8 extinguish a claim or right for damages or an extension of time that
9 the contractor *or subcontractor* may otherwise possess or acquire as
10 a result of a delay , *acceleration, disruption or an impact event* that
11 is:

12 (1) ~~Set~~ *In the case of a disruption or delay, so*
13 *unreasonable in length as to amount to an abandonment of the*
14 *public work;*

15 (2) Caused by fraud, misrepresentation, concealment or other
16 bad faith by the public body;

17 (3) Caused by active interference by the public body; ~~or~~

18 (4) Caused by a decision by the public body to significantly
19 add to the scope or duration of the public work; ~~or~~

20 (5) *Unreasonable under the circumstances;*

21 (6) *Not a delay, acceleration, disruption or an impact event*
22 *which was within the contemplation of the parties at the time the*
23 *agreement was entered into; or*

24 (7) *Not a delay, acceleration, disruption or an impact event*
25 *for which the contractor or subcontractor, as applicable, is*
26 *responsible; or*

27 (d) Requires a contractor or public body to be responsible for
28 any consequential damages suffered or incurred by the other party
29 that arise from or relate to a contract for a public work, including,
30 without limitation, rental expenses or other damages resulting from
31 a loss of use or availability of the public work, lost income, lost
32 profit, lost financing or opportunity, business or reputation, and loss
33 of management or employee availability, productivity, opportunity
34 or services,

35 ➔ is against public policy and is void and unenforceable.

36 3. The provisions of subsection 2 do not prohibit the use of a
37 liquidated damages clause which otherwise satisfies the
38 requirements of law.

39 **Sec. 3.** This act becomes effective on July 1, 2017.

